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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/815,823

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Thomas Alexander

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EXAMINER

AFSHAR, KAMRAN

ART UNIT

PAPER NUMBER

2617

MAIL DATE

DELIVERY MODE

11/21/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/815,823

**Applicant(s)**

ALEXANDER, THOMAS

**Examiner**

KAMRAN AFSHAR

**Art Unit**

2617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 April 2004.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-56 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-56 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 02 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-893)  
4) ☐ Interview Summary (PTO-413)  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_  
Paper No(s)/Mail Date \_\_\_\_\_

## DETAILED ACTION

### ***Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-56 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1-41 of copending Application No. 11/461097. Although the conflicting claims are not identical, they are not patentably distinct from each other because all the claimed limitations recited in the present application are transparently found in the copending application 11/461097 with obvious wording variations. Take an example of comparing claim 1 of pending application and claim 1 of copending application 11/461097:

Pending Application 10/815823	Co-pending application 11/461097
1. A test unit for testing operation and measuring performance of wireless data	1. A test system for testing the roaming performance of a device under test

communication systems and equipment, comprising: a protocol test unit for generating test stimulus data, executing a sequence of test steps selected for testing operation and measuring performance of said wireless data communication systems, and processing test result data; a location processor, operatively coupled to said protocol test unit, for generating spatial location data providing the location of said protocol test unit relative to a preset point; and a first interface unit, operatively coupled to said protocol test unit, for converting said test stimulus data to a first format specific to said object under test and for converting said test result data to a second format specific to said protocol test unit.	(DUT), comprising: a plurality of packet transmitters for transmitting test data packets to the DUT; and plurality of packet receivers for receiving test data packets from the DUT; wherein the test system emulates the movement of a plurality of emulated network devices while both the test system and the DUT remain physically fixed.
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The claims of the application 10532242 encompass the same subject matter except the instant “**A test unit for testing operation and measuring performance of wireless data communication systems and equipment**” whereas the copending Application 11/461097 claims are to “**A test system for testing the roaming performance of a device under test**”. Therefore, it would have been obvious to one ordinary skill in the art at the time of the invention to implement the copending Application 11/461097 “**A test system for testing the roaming performance of a device under test**” as a “**A test unit for testing operation and measuring performance of wireless data communication systems and equipment**” because it was notoriously well known to utilize method and or a system for testing a

digital mobile phone network such as a GPRS or 3G network comprises creating test traffic using an unmodified test mobile phone coupled to a computer, and using the computer to measure a parameter associated with the network's response to the test traffic. The measurements made by the computer are encoded into the test traffic to create a data stream within the mobile phone network comprising test traffic, measurements relating to the test traffic, and signalling relating to the test traffic, whereby this data stream can be captured at points within the network and analyzed to investigate the functioning of the network dynamically as the network is exercised with the test traffic.

Further, the instant claims obviously encompass the claimed invention of 11/461097 application and differ only in terminology. To the extent that the instant claims are broaden and therefore generic to the claimed invention of 11/461097 application, in re Goodman 29 USPQ 2d 2010 CAFC 1993, states that a generic claim cannot be issued without a terminal disclaimer, if a species claim has been previously been claimed in a co-pending application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### ***Allowable Subject Matter***

3. Upon filing a suitable Terminal Disclaimer and proper overcome of the ***Double Patenting rejection*** as discussed above in items 1-2, Claims 1-56 would be allowed. The following is an examiner's statement of reasons for allowance: 1-56.

With respect to claim 1, Ko (U.S. Pub. No.: 2003/0100299 A1) is the closest prior art to the application invention which discloses a test unit for testing operation and measuring performance of wireless data communication systems and equipment (See Ko e.g. Figs. 5-6, Page 8, ¶ [0079]).

Mlinkarsky (U.S. 6, 724, 730 B1) teaches a method and system for simulating a spatial positioning of a plurality nodes in the simulated wireless environment (See Title, Abstract, Co. 3, Lines 34-45).

However, the prior art of record fails to disclose singly or in combination or render obvious that comprising: a protocol test unit for generating test stimulus data, executing a sequence of test steps selected for testing operation and measuring performance of the wireless data communication systems, and processing test result data; a location processor, operatively coupled to said protocol test unit, for generating spatial location data providing the location of said protocol test unit relative to a preset point; and a first interface unit, operatively coupled to the protocol test unit, for converting the test stimulus data to a first format specific to the object under test and for converting said test result data to a second format specific to the protocol test unit.

With respect to claim 24, the prior art of record fails to disclose singly or in combination or render obvious that comprising:  $n$  test units, each test unit for selectively testing a specific parameter and data protocol pertinent to an object under test, where  $n$  is an integer  $n \in [1, N]$ ; a location processor on the said test units for determining the location of each the test unit relative to a pre-set point; a central controller for monitoring, controlling and coordinating operation of the test units and collecting test results data associated with the respective spatial location data; and a user interface for enabling selection of test sequences, configuration of traffic generation and of test parameters.

With respect to claim 29, the prior art of record fails to disclose singly or in combination or render obvious that comprising: a) providing  $n$  test units in the proximity of an object under test and connecting the test units to a central controller, where  $n$  is an integer  $n \in [1, N]$ ; b) initializing a connection between said test units and said central controller; c) configuring, at each the test unit, traffic generation, a test sequence, and a set of reporting parameters according to said test sequence; d) operatively controlling said test units for executing the test sequence; e) collecting test result data at the test units and associating the test result data with a respective test unit; and f) organizing, reviewing and analyzing the test result data.

With respect to claim 56, the prior art of record fails to disclose singly or in combination or render obvious that comprising:  $n$  test units, each test unit for selectively testing a specific parameter and data protocol pertinent to an object under test in the wireless data communication systems, where  $n$  is an

integer  $n \in [1, N]$ ; a location processor on each the test units for determining the location of each the test unit relative to a pre-set point; a central controller for monitoring, controlling and coordinating operation of said test units and collecting test results data associated with the respective spatial location data; and a user interface for enabling selection of test sequences, configuration of traffic generation and of test parameters; wherein at least one of said  $n$  test units includes a wireless network interface unit for testing a wireless object in the wireless network portion, and wherein at least one of the  $n$  test units includes a wired network interface unit for testing a wired object in the wireless network portion.

### ***Conclusion***

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

a) Jones (U.S. 7, 298, 702 B1B1).

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Kamran Afshar whose telephone number is (571) 272-7796. The examiner can be reached on Monday-Friday.

If attempts to reach the examiner by the telephone are unsuccessful, the examiner's supervisor, **Eng, George** can be reached @ (571) 272-7495. The fax number for the organization where this application or proceeding is assigned is **571-273-8300** for all communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

**/Kamran Afshar/  
Examiner, Art Unit 2617**

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